

REMARKS

Applicants' attorney thanks the Examiner for her comments. Independent Claims 62 and 63 have been amended to recite a range of about 50-80 parts by weight of high performance elastomer and about 20-50 parts by weight low performance elastomer based on a combined weight of high and low performance elastomers. Claims 70-71 have been canceled. Claim 73 has been amended to recite a range only for the filler particles.

The amended claims are supported by the Examples in Table 1, page 31. As indicated on pp. 31-32, "only Samples 1 and 2 could be successfully stretched and laminated." The claims have been amended to focus on the composition ranges defined by the successful Examples, Samples 1 and 2.

Sample 1 contained 50% by weight "P4592-106A" and 50% by weight "1730-45." As explained on p. 31, P4592-106A is a blend of 20% AFFINITY PL 1845 (low performance elastomer), 20% AFFINITY EG 8200 (low performance elastomer) and 60% calcium carbonate filler. As further explained, 1730-45 is a blend of 45% KRATON GI730 (high performance elastomer) and 55% calcium carbonate filler. Therefore, Sample 1 contained a total of 22.5% by weight high performance elastomer, 20.0% by weight low performance elastomer, and 57.5% by weight filler. Sample 1 thus contained 52.9 parts by weight high performance elastomers and 47.1 parts by weight low performance elastomer, based on a combined weight of high and low performance elastomers.

Sample 2 contained 25% by weight P4592-106A and 75% by weight 1730-45. Therefore, Sample 2 contained 33.75% by weight high performance elastomer; 10% by weight low performance elastomer, and 56.75% by weight filler. Sample 2 thus contained 77.1 parts by weight high performance elastomer and 22.9 parts by weight low performance elastomer, based on a combined weight of high and low performance elastomers.

Based on these calculations, the successful Samples 1 and 2 collectively support the claimed ranges of "about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer, based on a combined weight of high and low performance elastomers," as recited in Claims 62 and 63. Samples 1 and 2 also have filler contents within the ranges recited in Claims 72 and 73.

The Examiner rejected Claims 62-69 and 72 under 35 U.S.C. §102(e) as anticipated by U.S. Patent 6,015,764 to McCormack et al. This rejection is respectfully traversed. McCormack et al. does not disclose a breathable, stretch-thinned film as recited in Claims 62 and 63, comprising high performance elastomer, low performance elastomer and filler, wherein the high and low performance elastomers are present in a weight ratio of about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer.

The Examiner refers to Column 3, lines 5-10 and 47-50, and Claim 1, of McCormack et al. Neither passage discloses a film including about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer, based on a combined weight of high and low performance elastomers, as recited in Claims 62 and 63.

The Examiner rejected Claims 62-73 under 35 U.S.C. §102(e) as anticipated by U.S. Patent 6,258,308 to Brady et al. This rejection is respectfully traversed. Brady et al. discloses a breathable film which can be formed using a blend of a metallocene-catalyzed ethylene polymer and a styrene block copolymer elastomer (Col. 7, line 52 - Col. 8, line 67). However, the amount of styrene block copolymer elastomer may be present at about 1.4-25% by weight of the combined polymers (Col. 8, lines 63-67). This means that the amount of ethylene polymer (low performance elastomer) exceeds the amount of styrene block copolymer (high performance elastomer) by a ratio of at least three to one.

The Examiner read the passage at Col. 8, lines 64-67 to indicate that the film contains 1.4-25% of styrene block copolymer (Office Action p. 4). However, the text states that the styrene block copolymer elastomer is included in the polyolefin component, and the range of elastomer inclusion is about 1.4-25% by weight (Col. 8, lines 55-56 and 64-67). Thus, the disclosed range of styrene elastomer inclusion is based on the combined polymer weight, and is not based on the weight of the film.

Brady et al. does not disclose a film in which an amount of styrene block copolymer high performance elastomer equals or exceeds an amount of low performance elastomer. Brady et al. does not disclose a breathable, stretch-thinned film as recited in Claims 62 and 63, comprising styrene block copolymer high performance elastomer, low performance elastomer and filler, wherein the high and low performance elastomers are

present in a weight ratio of about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer.

The Examiner rejected Claims 70-71 and 73 under 35 U.S.C. §103(a) as obvious over McCormack et al. in view of Brady et al. Claims 70-71 have been canceled. As explained above, neither references discloses a film containing a styrenic block copolymer elastomer combined with a low performance elastomer in a weight ratio of 50-80 parts by weight high performance elastomer and 20-50 parts by weight low performance elastomer, as recited in Claims 62 and 63. Claim 73 should be patentable for at least the same reasons as the independent claims.

Furthermore, pursuant to 35 U.S.C. §103(c), McCormack et al. is not available as a reference under 35 U.S.C. §103(a). The instant application was filed on 25 February 2000, which is after the effective date of 35 U.S.C. §103(c). It is apparent from U.S. Patent and Trademark records that both McCormack et al. and the instant application are assigned to Kimberly-Clark Worldwide, Inc. The assignment of McCormack et al. was recorded on 11 August 1997, at Reel 8638, Frame 0078. The assignment of the instant application was recorded on 05 February 2001, at Reel 11501, Frame 0517. If the Examiner requires further information, then please contact the undersigned at (847) 490-1400.

The Examiner rejected Claims 62, 63, 66-68 and 70 under the doctrine of obviousness-type double patenting based on Claims 1-11 of U.S. Patent 6,479,154 to Walton et al., in view of U.S. Patent 5,451,450 to Erderly et al. This rejection is respectfully traversed.

For purposes of a double patenting rejection, only the claims of Walton et al. (not the specification) may be used as a reference. The claims of Walton et al. do not disclose a breathable elastomeric film including a styrene block copolymer high performance elastomer and a low performance elastomer as recited in Applicants' Claims 62 and 63, wherein the styrene block copolymer high performance elastomer and the low performance elastomer are present in a weight ratio of about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer. The styrene block copolymer is not disclosed. The weight ratio is not disclosed. Erderly also does not disclose a styrene block copolymer high performance elastomer, or the claimed weight ratio of high performance elastomer to low performance elastomer.

Applicants believe that the claims, as now presented, are in condition for allowance. If the Examiner feels that any issues remain unresolved, then Applicants' undersigned attorney requests a telephone call from the Examiner, and a telephone interview.

Respectfully submitted,


Maxwell J. Petersen
Registration No. 32,772

Pauley Petersen & Erickson
2800 West Higgins Road; Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403